

O'CONNOR & HANNAN, L.L.P.  
ATTORNEYS AT LAW

PATRICK J O'CONNOR  
JOE A WALTERS  
F. GORDON LEE  
GEORGE J MANNINA, JR  
THOMAS J CORCORAN\*  
ROBERT M ADLER  
TIMOTHY W JENKINS  
KURT E BLASE  
ROY C COFFEE\*\*  
JAMES W SYMINGTON  
GARY C ADLER  
JOHN M HIMMELBERG  
J CRAIG POTTER  
ALBERT P LINDEMANN, JR.  
JED L BABBIN  
EMIL HIRSCH  
FREDERICK T DOMBO, III  
PAUL L. KNIGHT  
GERALD H. YAMADA  
REED W NEUMAN

PARKER E BRUGGE  
JAMES H ENGLISH\*

ASSOCIATES  
JAMES F RYAN  
CATHERINE M SAUVAIN

INTERNATIONAL CONSULTANTS  
EDNY RAZ\*\*\*

LEGISLATIVE CONSULTANTS  
ROBERT W BARRIE\* (RESIDENT IN FLORIDA)  
GEORGE J HOCHBRUECKNER\*

OF COUNSEL  
CHARLES R MCCARTHY, JR  
STEPHEN N SHULMAN  
STEPHEN M SOBLE  
THOMAS J SCHNEIDER  
DAVID R MELINCOFF

SUITE 500  
1666 K STREET, N.W.  
WASHINGTON, D.C. 20008-2803  
(202) 887-1400  
FAX (202) 466-2198  
FAX (202) 466-3215  
www.oconnorhannan.com

TYSONS CORNER  
8300 BOONE BOULEVARD  
5TH FLOOR  
VIENNA, VIRGINIA 22182  
(703) 714-6670  
FAX (703) 848-4586  
H GEORGE SCHWEITZER

\* NOT AN ATTORNEY  
\*\* NOT A MEMBER OF THE D.C. BAR  
\*\*\* NOT PRACTICING LAW IN THE U.S.

February 24, 2005

RECEIVED

FEB 25 2005

PUBLIC SERVICE  
COMMISSION

Beth A. O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfurt, KY 40602

Re: Case No. 2004-00423

Dear Ms. O'Donnell:

On February 22, 2005 EnviroPower, L.L.C., through counsel, participated in a conference call with the parties of record and the Commission Staff in the above-referenced case in order to discuss a draft Data Request circulated by Staff, and in order to elicit details regarding the prepared direct testimony of Lynne S. Travis regarding the evaluation of the East Kentucky Power Cooperative's ("EKPC") Self-Build Proposal as compared to the EnviroPower bid to supply power under a Power Purchase Agreement.

During the conference call, EnviroPower raised several issues which we find important to the Data Request and the instant proceedings.

EnviroPower's Request For Data

Since EnviroPower is not a formal party to this proceeding, we hesitate to file a motion, in any form, before the Commission. However, in its Order of February 3, 2005, the Commission found that: To the extent that EnviroPower seeks assurance that its bid was properly evaluated, its interests coincide with those of East Kentucky's ratepayers.

EnviroPower finds itself at a disadvantage in these proceedings, because it is clear that all of the relevant documentation in this case, including redacted submissions in order to comply with confidentiality requirements, is not available on the website. EnviroPower appreciates the responsiveness of staff to providing us today with the EKPC January 10 Response to "the Commission's December 23, 2004 Data Request, which is a document unavailable to EnviroPower from the website, but which was discussed in the proposed order. Absent full access to the historical record in this case, EnviroPower cannot fully and effectively participate.

We seek a non-disruptive, but comprehensive means of obtaining the record and await your advice on this point.

### Detailed Amplification And Clarification Of The Proposed Data Request

EnviroPower supports the direction of the Data Request from Commission staff, but can foresee two specific, avoidable problems. First, given the general nature of the request, it is possible that the responding submission could fail to state critical categories of cost calculations. To address this problem, EnviroPower raises some detailed points below. Second, the side-by-side comparison ought to be the actual side-by-side comparison used by EnerVision to evaluate the EKPC Self-Build Proposal and the EnviroPower, LLC bid rather than a newly created side-by-side comparison for purposes of this Data Request.

### Detailed Cost Calculations

EnviroPower would recommend, for Commission staff's consideration, the following amplifications and clarifications of the Data Request:

1. Please provide all work papers, submissions and other data received by EnerVision from either or both EKPC and EnviroPower which formed the basis for EnerVision's preparation of its work papers, regarding all calculations necessary to derive the average cost per MWh for each party.
2. Please provide the most detailed and comprehensive financial model and set of calculations upon which EnerVision relied in making its recommendation.
3. With regard to capital costs, please provide any supporting documents offered by either EKPC or EnviroPower to support either quoted prices or estimated prices. Please make a clear distinction, by footnote or by color coding or other means, of the distinction between quoted prices, estimated prices, assumed prices and/or project prices.
4. For all estimated, assumed or projected cost numbers, please provide the analytical basis for that estimated, assumed or projected price.
5. With regard to fuel costs, please specify, in detail, the cost assumptions associated with the volume and type of coal to be procured, the BTU content of the coal, shipping, storage and handling charges associated with the fuel supply and other details leading to the fuel cost estimates, assumptions, projections or quotations.
6. Please provide a detailed analysis of the EnerVision calculation of the cost of permit risk in each transaction. For example, while EKPC has applied for its permit for Spurlock Unit No. 4, the USEPA has issued a deficiency letter to EKPC for the Spurlock Unit No. 4 Project. Moreover, the Kentucky Department of Air Quality maintains that the Federal Land Management Bureau, representing air quality issues on behalf of The Great Smokey Mountains National Park, has raised such serious deficiencies that it would require a *de novo* technical analysis and review of air quality compliance requirements. In light of the permit risk

raised by these facts, it appears, that at a minimum, EKPC would be required to add significant emissions control equipment to the design of its plant, and may require certain fundamental redesign changes in the entire conceptual and detailed design phases of its plant. Please detail how EnerVision evaluated this risk and the cost associated with permit compliance on the appropriate line item in the cost analysis.

7. Please explain the methodology used for calculating the risk and cost associated with the fact that EKPC has no Siting Certificate for Spurlock No. 4.
8. Please confirm the status of the EnviroPower Siting Certificate and other permits so that a proper point-to-point analysis can be made between EKPC and EnviroPower.
9. EnerVision maintains that the cost of performing a federal Environmental Impact Statement ("EIS") for the EnviroPower project was added to the cost analysis for EnviroPower. Please explain the basis upon which you evaluated and calculated the cost, specifically addressing the following two questions:
  - (a) Is there an absolute obligation on EnviroPower to perform an EIS?
  - (b) Has EnviroPower indicated to EKPC that the cost of any EIS would be passed through as a capital cost in this project? If so, please provide documentary support for this position.
10. Please provide a separate analysis of the escalation rates offered by EKPC and EnviroPower. Specifically, please respond to the following questions:
  - (a) Is it true that the EnviroPower bid offered a fixed escalation rate of 1.8% per annum, for the life of the project? If not, please document what was offered.
  - (b) Please provide documentary support for the fixed escalation rate guaranteed by EKPC. If no fixed escalation rate was provided, please provide a detailed analysis of the estimated future escalation cost, the assumptions underlying those estimates, and please project the entire future price escalation estimates over the 32-year life of the contract, taking into account justified, reasonable assumptions, including present discounted value calculations in order to be able to compare EKPC estimated future prices to EnviroPower's fixed rate prices.
  - (c) In comparing 32-year estimated escalation costs with 32-year fixed escalation rates, please provide a best case, worst case, and projected likely case scenario for the estimated escalation rates of EKPC.

- (d) Please provide a written justification supporting your conclusion regarding your judgment on projected likely estimated escalation rates.
11. With regard to the 32-year cost comparison between the EKPC and EnviroPower proposals/bids, please provide a best case, worst case and projected likely case scenario for each party's proposal or bid.

#### Confidentiality

Because EnviroPower is not a party to these proceedings, EnviroPower does not have standing to submit a petition to the Commission to protect the confidentiality of the contents of its bid. EnviroPower can only rely on the judgment and request of EKPC in this connection. To the extent permitted by our unusual role in this proceeding, EnviroPower would like to establish with the Commission, with the Commission staff, and with the Parties of Record, a detailed understanding regarding the confidentiality of EnviroPower data. At a minimum, the confidentiality afforded to EKPC with regard to its self-build proposal should be afforded to the EnviroPower bid.

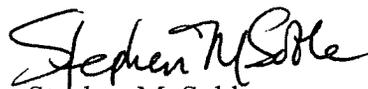
#### A Foreseeable Dilemma For The Parties, The Commission And The Staff

In light of the confidentiality orders issued in this case and the desire and the request of EnviroPower to be afforded the same level of confidentiality with regard to its bid as that afforded to EKPC for its self-billed proposal, we see a potential serious dilemma.

During the conference call, counsel for EKPC reasonably projected the likelihood that confidentiality would be asserted over virtually all of the critical numbers in the submissions made pursuant to the Data Request. This may be understandable. However, under such circumstances, EKPC and only EKPC would have access to both the EKPC self-build numbers and the EnviroPower numbers. Such a result would deny EnviroPower equal footing and the ability to assist the Commission in reaching its goal of trying to compare on an apples-to-apples basis the cost comparison analysis of the two competing bids.

Therefore, EnviroPower wishes to inform Commission staff and the Commission that we are willing to work with the Commission, Staff and EKPC (and other Parties to the proceeding) to fashion an appropriate protective order, mechanism for review and process to be able to afford EKPC and EnviroPower equal footing with regard to the evaluation, analysis, examination, and cross examination of the relevant data and testimony for the benefit of the Commission, Commission Staff, and the Rate Payers of the Commonwealth of Kentucky.

Respectfully submitted,

  
Stephen M. Soble  
O'Connor & Hannan, LLP

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on this 24<sup>th</sup> day of February, 2005.

Charles Lyle, Esq.  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P.O. Box 707  
Winchester, Kentucky 40392-0707

Mr. Bill Bosta, Manager of Pricing Process  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P.O. Box 707  
Winchester, Kentucky 40392-0707

Elizabeth Blackford, Esq.  
Office of Rate Intervention  
1024 Capitol Center Drive  
Frankfort, Kentucky 40601

Frederic J. Cowan  
Lynch, Cox, Gilman & Mahan, P.S.C.  
400 West Market Street  
Suite 2200  
Louisville, Kentucky 40202

Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East 7<sup>th</sup> Street, Suite 1510  
Cincinnati, Ohio 45202



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Stephen M. Soble  
O'Connor & Hannan, LLP